Item NO. 1008-D

X 96-2: H.R.P. 1461

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1461

FEDERAL QUESTION JURISDICTIONAL AMENDMENTS ACT OF 1980

NOVEMBER 13, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary, submitted the following

COMPLETED ORIGINAL

REPORT

together with

SEPARATE VIEWS

[To accompany S. 2357]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (S. 2357) to eliminate the amount in controversy requirement for Federal question jurisdiction, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of the proposed legislation is to abolish the $10,000 amount in controversy requirement in Federal question cases. The bill retains the requirement only in cases brought pursuant to the Consumer Product Safety Act. S. 2357 will complete the work of the 94th Congress which eliminated the jurisdictional amount requirement in cases brought against Federal defendants. It resolves the anomolous situation faced by persons who, although their Federal rights have been violated, are barred from a Federal forum solely because they have not suffered a sufficient economic injury. It represents sound principles of federalism by mandating that the Federal courts should bear the responsibility of deciding all questions of Federal law. At the same time, it demonstrates an increased respect for the States by providing that Federal claims should not be forced on the overburdened State court systems.

The $10,000 amount in controversy requirement in 28 U.S.C. § 1331 is widely recognized as an undesirable impediment to the exercise of

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Federal court jurisdiction over Federal question cases.[1] While the cases affected are relatively few in number, the requirement wastes scarce judicial resources in the complicated task of measuring the amount in controversy whenever the issue does arise. The $10,000 requirement is particularly troublesome because it tells certain citizens, all too often the poor, that although their Federal rights have been violated, their injury is too insignficant to warrant the attention of a Federal judge. It ignores the fact that many important claims are incapable of economic valuation and it operates in total disregard of the importance, difficulty or far-reaching nature of the Federal claim at issue. Further, since in most cases parties cannot aggregate their damages,[2] claims where the true amount in dispute is far more than $10,000 are denied a Federal forum because no one person has sustained the requisite injury. Perhaps most important, as Professor Wright has written:

> We do nothing to encourage confidence in our judicial system or in the ability of persons with substantial grievances to obtain redress through lawful processes when we close the courthouse door to those who cannot produce $10,000 as a ticket of admission.[3]

Originally enacted to reduce case congestion in the Federal courts, the requirement has lost most of its impact as Congress has passed the many specialized jurisdictional statutes which do not require a jurisdictional amount.[4] In 1976, the 94th Congress took a major step toward eliminating the remaining inequality by passing Public Law 94–574 (Act of Oct. 21, 1976, 90 Stat. 2721) which amended 28 U.S.C. § 1331 to provide that no amount in controversy is required in any Federal question case brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.[5] In spite of the fact that the 1976 reform did away with the $10,000 requirement in the most significant category of cases in which it had previously applied, there are still a small number of cases in which the amount in controversy requirement still applies: for example, suits arising under Federal common law, challenges to certain state and local law, and several types of miscellaneous cases.[6] Thus, an unfortunate gap still exists in the statutory jurisdiction of the Federal courts.

Because of the relatively small number of cases involved, the Committee believes that the impact this measure will have on the Federal court caseload will be minimal. Further, this bill will relieve the courts from the necessity of resolving the many difficult problems that currently arise in the interpretation of the § 1331 amount in controversy

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[1] Diversity of Citizenship/Magistrates Reform: Hearings Before the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary, 95th Cong., 1st Sess. (1977) (letter from Charles Alan Wright to Hon. Robert W. Kastenmeier, at 260).

[2] *Snyder* v. *Harris*, 294 U.S. 332 (1969).

[3] Hearings before the Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary, June 3, 1970, 91st Cong. 2d sess. (1970), p. 254.

[4] See, e.g., 28 U.S.C. § 1333 (admiralty, maritime and prize cases); 28 U.S.C. § 1334 (bankruptcy cases); 28 U.S.C. § 1337 (interstate commerce cases); 28 U.S.C. § 1338 (patent, copyright and trademark cases); and 28 U.S.C. § 1339 (postal matters).

[5] See, Senate Report No. 94–996, 94th Cong., 2d Sess. 14 (1976), reprinted in 1976 U.S. Code Cong. and Ad. News, 6121, 6134.

[6] See letter from Charles Alan Wright to Hon. Robert W. Kastenmeier, supra note 1.

requirement. Professor Wright describes it as a "complicated body of law" and devotes 156 pages of his treatise to this issue.[7] By eliminating these questions, this bill will save a substantial amount of valuable court time.

Statement

Over the past four years, the Subcommittee on Courts, Civil Liberties, and the Administration of Justice has held extensive hearings on the subject of the jurisdiction of the Federal courts. The Subcommittee began its examination of this area in 1977 with seven days of oversight hearings on the State of the Judiciary and Access to Justice. Based on the testimony at those hearings from representatives of the three branches of government, the State courts, the practicing bar, the public interest law community, and academia, the Subcommittee chose to pursue the question of abolishing what remained of the Federal question jurisdictional amount. Further hearings were held and the three witnesses who appeared, Daniel Meador, U.S. Department of Justice; Joseph Spaniol, Jr., Administrative Office of the U.S. Courts; and Prof. Lucas L. Powe, University of Texas Law School wholeheartedly endorsed the proposed change. In addition, several individuals and organizations, including Prof. Charles Alan Wright, University of Texas; The Administrative Conference of the United States; Prof. Kenneth Karst, UCLA Law School; Richard Field, Esq.; Erwin Griswold, Esq.; and Prof. Telford Taylor, Harvard Law School, wrote to the Subcommittee expressing their support. There was no opposition at all to the proposal. In 1978, the House of Representatives passed the Subcommittee's proposal that the amount in controversy be abolished, but there was no final action on the bill.

The measure was reintroduced in the 96th Congress. The Subcommittee held hearings on February 28, March 1 and March 8, 1979 where the witnesses addressing this issue uniformly testified in favor of it. They included the Honorable Elmo B. Hunter, who appeared on behalf of the Judicial Conference; Assistant Attorney General Daniel J. Meador; and Michael B. Trister. In addition, Prof. Charles Alan Wright and the American Civil Liberties Union sent letters to the Subcommittee in support of the proposal. There was no opposition. On September 18, 1980, the Subcommittee on Courts, Civil Liberties, and the Administration of Justice held one day of markup on the legislation and unanimously recommended the legislation to the full committee. The Committee approved the legislation on September 30, 1980 by a voice vote without objection being heard.

Section-by-Section Analysis

Section 1.—Title. This section provides that the title of S. 2357 shall be "Federal Question Jurisdictional Amendments Act of 1980."

Section 2.—Federal Question Jurisdiction.

Subsection (a) of section 2 abolishes the amount in controversy requirement in Federal question cases. Because the existing exception (passed by the 94th Congress, Oct. 21, 1976, Public Law 94–574, § 2, 90 Stat. 2721) for suits against "the United States, any agency thereof,

[7] See 14 Wright, Miller and Cooper, "Federal Practice and Procedure: Jurisdiction" 355–511 (1976).

or any officer or employee thereof in his official capacity" is no longer necessary, it is stricken. For the same reason, § 1331(b), which relates to imposition of the costs of litigation on the plaintiff when he is finally adjudged to be entitled to recover less than $10,000, is stricken.

Subsection 2(b) conforms the item in the table of sections relating to 28 U.S.C. § 1331.

Section 3 conforms a cross reference in the Consumer Product Safety Act (15 U.S.C. § 2072(a)) to the amount in controversy requirement in 28 U.S.C. § 1331. The Consumer Product Safety Act is recent legislation (passed by the 94th Congress) and its clear intent was to create a Federal cause of action based in part on a showing of over $10,000 in controversy. Since the subcommittee has neither jurisdiction nor expertise on matters arising under the Consumer Product Safety Act, it voted to leave its provisions as they would have been if 28 U.S.C. § 1331 had not been amended.

SECTION 4—EFFECTIVE DATE

Section 4 provides that this bill shall apply to any civil action pending in Federal court on the date of enactment. By putting congressional intent into immediate effect, this provision will eliminate ongoing jurisdictional battles, thus saving valuable court time.

OVERSIGHT STATEMENT

Oversight responsibility for the U.S. Courts and the exercise of their jurisdiction rests with the Committee on the Judiciary.

NEW BUDGET AUTHORITY

S. 2357 creates no new budget authority.

COST OF THE LEGISLATION

The Committee on the Judiciary concurs in the estimate prepared by the Congressional Budget Office on the cost of S. 2357. This estimate is that there will be no significant additional cost to the government as a result of enactment of this legislation.

STATEMENT OF THE CONGRESSIONAL BUDGET OFFICE

Pursuant to clause 7, rule XIII, of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the following is the cost estimate of S. 2357 prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., November 12, 1980.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2357, the Federal Question Jurisdictional Amendments Act of 1980, as ordered reported by the House Committee on the Judiciary, September 30, 1980.

Under current law, suspected violations of federal law which are estimated to involve less than $10,000 in damages are heard by state courts. Suits involving $10,000 or more are heard by the federal district courts. In those instances where action is brought against the United States, no value requirement exists. S. 2357 would lift the $10,000 limitation for federal question suits other than those that arise under the Consumer Protection Safety Act and allow all other civil actions of this type to be heard in the district courts. Based on information from the Justice Department, it is expected that no significant additional cost to the government will be incurred as a result of enactment of this legislation.

Sincerely,

ALICE M. RIVLIN, *Director.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

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CHAPTER 85—DISTRICT COURTS; JURISDICTION

Sec.
1330. Action against foreign states.
1331. Federal question [; amount in controversy; costs.]

* * * * * * *

[§ 1331. Federal question; amount in controversy; costs

[(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States, except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

[(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.]

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

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SECTION 23 OF THE CONSUMER PRODUCT SAFETY ACT

SUITS FOR DAMAGES BY PERSONS INJURED

SEC. 23. (a) Any person who shall sustain injury by reason of any knowing (including willful) violation of a consumer product safety rule, or any other rule or order issued by the Commission may sue any person who knowingly (including willfully) violated any such rule or order in any district court of the United States in the district in which the defendant resides or is found or has an agent, [subject to the provisions of section 1331 of title 28, United States Code as to the amount in controversy,] shall recover damages sustained, and may, if the court determines it to be in the interest of justice, recover the costs of suit, including reasonable attorneys' fees (determined in accordance with section 10(e)(4)) and reasonable expert witnesses' fees: *Provided, That the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, unless such action is brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.*

(b) Except when express provision is made in a statute of the United States, in any case in which the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

[(b)](c) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by common law or under Federal or State law.

SEPARATE VIEWS OF THE HONORABLE M. CALDWELL BUTLER JOINED BY MESSRS. KASTENMEIER, RAILSBACK, FISH, DRINAN, SEIBERLING, EDWARDS, KINDNESS, MOORHEAD, McCLORY, RODINO, SYNAR, MAZZOLI, HUGHES, DANIELSON, GUDGER, AND LUNGREN

We do not oppose H.R. 2202, which was amended by the Judiciary Committee. The Committee amendment deleted the most important part of the bill, that is, the abolition of the use of Federal diversity of citizenship jurisdiction. It retained, in H.R. 2202, the noncontroversial section, the elimination of the amount in controversy requirement for Federal question jurisdiction. We are not opposed to the Subcommittee action. However, Federal cases belong in Federal courts, just as State cases belong in State courts. That is why this issue went hand-in-hand with the elimination of Federal diversity jurisdiction which deals with matters involving questions and application of State law. We are hopeful, however, that the Subcommttee intends to take action on the elimination of diversity jurisdiction early next year and that the organizations which are supporting this bill before us today will continue to assist us in our efforts to process the elimination of diversity jurisdiction.

Legislation to abolish the use of diversity in Federal courts passed the U.S. House of Representatives last Congress on two different occasions (February 20, 1978, 266–133; and October 4, 1978, 323–49). The House Judiciary Committee, Subcommittee on Courts, held seven days of hearings, 1977 and 1978, on this issue and three days in 1979. There is still strong support for the abolition within the House Judiciary Committee and, we believe, in the House of Representatives. However, since this measure passed the House twice last Congress, we are waiting to see if the other body will act.

Abolition of the use of diversity jurisdiction as a means of entering Federal courts is only one of a number of legislative measures directed at bringing our 18th century Federal judiciary into the 20th century. Two Congresses ago, we abolished the use of the three judge court, last Congress we increased the number of judges and reorganized the bankruptcy courts; in May of this year, the House enacted and the President signed H.R. 10, which in part would require state prisoners to use their state remedy prior to coming into Federal court. This alone is expected to reduce the civil caseload by 6 percent (over 9,000 cases). In addition, this year we expanded the use of magistrates. There is not a whole lot more the legislature can do to relieve the caseload burden on our Federal courts. We know, for certain, that the solution is not the continued increase in the number of Federal judges, so we look for ways to expedite and streamline the process. The abolition of the use of diversity jurisdiction would be a major updating of our Federal judiciary.

Diversity jurisdiction finds its basis in Article III, Section 2 of the U.S. Constitution. It is intended to permit, but not require, Federal courts jurisdiction involving controversies between different states and between a state, or the citizens thereof, and foreign states. This provision of the Constitution is not self-executing. However, since the first Judiciary Act of 1789, the Federal courts have had jurisdiction in diversity cases. Legislative history as to why the first Congress exercised its prerogative to vest diversity jurisdiction in Federal courts is not very illuminating. Scholars who have researched the issue have concluded that the primary motivation for the enactment of diversity jurisdiction was to provide an objective forum for the determination of controversies free from local prejudice or influence, or at least the fear of such. Another view is that the nations' early lawmakers shared misgivings as to whether at least some of the State courts would be fair to the interest of out-of-state creditors. In addition, at that time in our country's history, we had a Federal judiciary with a very light caseload. We also had, at that time, a weak central government and Federal court involvement in local matters, at the very least, enhanced local awareness of the existence of a central government.

All of this was thought to justify a Federal incursion on the State's authority to settle its own disputes. Justified or not, the conditions that existed in 1789 are vastly different than those that exist in 1979. The decision as to what role diversity jurisdiction should play in modern American Federal jurisprudence as well as what should be the proper balance between the State and Federal courts must be made on present day facts, and we contend the facts are that there is no existing information that would indicate justification for maintaining a system that has become burdensome to the operation of our Federal courts. It is clear to us that the primary benefactor of permitting the luxury of a choice of courts is the trial attorney's whose practice consists primarily of representing corporations, insurance companies, personal injury type cases caused by motor vehicle accidents, and the trial attorney's decision is based on any number of factors such as backlog procedures, courthouse location, court personnel, the type of jury, and the potential size of the verdict. If there is bias against out-of-staters, then it exists for all those cases with similar facts which happen to be under the $10,000 minimum. The local lawyer handling a case below $10,000 with otherwise identical facts which will be decided by application of State, not Federal law, does not have any choice of a Federal court. Why should a litigant, by mere accident or geography and amount of money involved, have an advantage, if there is one, over a neighbor with an otherwise identical case?

About 25 percent of the current civil caseload of Federal district courts consist of diversity cases. While only 8 percent of all Federal cases (civil and criminal) go to trial, 12 percent of diversity cases are tried. The more than 3,000 diversity trials held each year in Federal courts constitute 25 percent of all civil and criminal jury trials, and about 68 percent of all civil jury trials. By contrast, the elimination of Federal diversity jurisdiction will increase the civil caseload of State courts of general jurisdiction by an average of 1.63 percent. Yet, the Association of State Chief Justices voted overwhelmingly to sup-

port the enactment of this legislation. While the American Bar Association is on record in opposition to this legislation, its select committee, which it chose to study the issue, recommended to the House of Delegates to support *curtailment* of diversity. It failed by a vote of 164–127. The Federal government can no longer afford to give these special litigants the luxury of a choice of forum. A recent study prepared by the Department of Justice concludes that the abolition of diversity is expected to result in a savings to the taxpayers of $8.8 million each year, once the pending cases are terminated.

In conclusion, the time burden and expense diversity jurisdiction imposes on our Federal courts can no longer be justified. State courts, not Federal courts, should administer and interpret State law. Federal courts are at a disadvantage when a decision is required concerning a point of State law, especially when the highest State court may not have ever spoken on that particular point. The House Judiciary Committee, and its Subcommittee on Courts, has an obligation to proceed with legislation that will abolish the use of Federal diversity of citizenship jurisdiction.

M. Caldwell Butler.
Bob Kastenmeier.
Tom Railsback.
Hamilton Fish, Jr.
Robert F. Drinan.
John F. Seiberling.
Don Edwards.
Thomas N. Kindness.
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